

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**EZAKI GLICO KABUSHIKI KAISHA,
d/b/a EZAKI GLICO CO., LTD., and
EZAKI GLICO USA CORPORATION,**

Plaintiffs,

v.

**LOTTE INTERNATIONAL AMERICA
CORP. and LOTTE CONFECTIONERY
CO. LTD.,**

Defendants.

Civil Action No. 15-5477

ORDER

THIS MATTER comes before the Court by way of Defendants Lotte International America Corp. and Lotte Confectionary Co. Ltd.'s (together with Lotte International America Corp., "Defendants") motion to amend, ECF No. 328, the Court's Opinion and Order on summary judgment, ECF Nos. 323, 324;

and it appearing that by Opinion and Order dated July 31, 2019, this Court granted Defendants motion for summary judgment with respect to Plaintiffs Ezaki Glico Kabushiki Kaisha, d/b/a Ezaki Glico Co., Ltd. ("Ezaki Japan") and Ezaki Glico USA Corporation's (together with Ezaki Japan, "Plaintiffs") Second Amended Complaint, and denied the motion with respect to Defendants' false advertising counterclaims, see ECF No. 323 at 4–5 n.3;

and it appearing that Defendants did not seek summary judgment on the false advertising counterclaims, but rather sought summary judgment with respect to Counts I (declaratory judgment) and III (trademark cancellation) of its operative Counterclaim, see ECF No. 328.1 at 2 (citing ECF No. 117);

and it appearing that footnote three of this Court's Opinion, ECF No. 323 at 4–5 n.3, is

therefore stricken;

and it appearing that this Court's holding that the Pocky product configuration is functional requires that summary judgment be granted as to Counts I and III of Defendants' operative Counterclaim, ECF No. 117; see 15 U.S.C. § 1052(e)(5) (functional mark may not be registered on the Principal Register); 15 U.S.C. § 1091(c) (functional mark may not be registered on Supplemental Register); 15 U.S.C. § 1064(3) (registered trademark must be cancelled if functional);

IT IS on this 15th day of August, 2019;

ORDERED that Defendants' motion to amend, ECF No. 328 is **GRANTED**; and it is further

ORDERED Defendants' motion for summary judgment, ECF No. 228, is **GRANTED** as to Plaintiffs' Second Amended Complaint, ECF No. 102, and as to Counts I and III of Defendants' Counterclaim, ECF No. 117; and it is further

ORDERED that the Director of the U.S. Patent and Trademark Office strike Registration Nos. 1,527,208, 1,986,404, and 2,615,119 from its register; and it is further

ORDERED that the Court's Opinion and Order dated July 31, 2019, ECF Nos. 322, 323, are hereby amended as set forth in this Order; and it is further

ORDERED that this Court's Order dated July 31, 2019, ECF No. 324, is hereby unsealed.

/s Madeline Cox Arleo
HON. MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE